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The Politics of Land Deals

Verhoog, S.M.

published in

Empirical Perspectives on Communication
2015

document version

Publisher's PDF, also known as Version of record

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citation for published version (APA)

Verhoog, S. M. (2015). The Politics of Land Deals: A Comparative Analysis of Global Land Policies on Large-Scale Land Acquisition. In I. Hosu, & I. Iancu (Eds.), *Empirical Perspectives on Communication : IV. Institutional Communication* (Vol. I, pp. 139-170). (Empirical Perspectives on Communication; Vol. I). Accent.

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The Politics of Land Deals – A Comparative Analysis of Global Land Policies on Large-Scale Land Acquisition

Abstract Due to current crises, large-scale land acquisition is becoming a topic of growing concern. Public data from the ‘Land Matrix Global Observatory’¹ project demonstrates that since 2000, 1,622 large-scale land transactions² in low- and middle-income countries³ were reported, covering an area of nearly 69 million hectares. The majority of these land deals, also referred to as ‘land grabs’, took place between 2008 and 2010, peaking in 2009.

It is widely assumed that emerging economies, in search for alternative ways to secure future food and fuel supply are the major drivers behind the global land rush. New evidence however reveals that local and national governments and elites are largely initiating and facilitating these land deals, mainly driven by Western investors in order to meet (renewable) energy and commodity demands in the nearby future.

Large-scale land acquisition often goes hand in hand with issues of displacement, weak governance structures, corruption, conflicts, and environmental damages. Several international organizations have taken the initiative in developing global land policies on large-scale land acquisition in an attempt to govern the global land grab. The *effectiveness* of these so-called ‘soft law’ instruments is however increasingly being questioned. This paper therefore offers a comparative analysis on the effectiveness of global land policies on large-scale land acquisition, as developed by the European Union, the World Bank Group and consortium, the Food and Agriculture Organization, and the African Union, embedded in a theoretical framework of *effectiveness*, *soft law*, and interrelations with *transparency*, *accountability* and *legitimacy*. Currently the FAO-CFS Voluntary Guidelines and the AU Framework & Guidelines are being implemented. The research is therefore focusing on the effectiveness of these two land policy frameworks.

Evidence so far reveals that in practice global land policies on large-scale land acquisition can be problematic due to: 1) their ‘voluntary character’, 2) land deals are often initiated and facilitated by nationals (elites) and/or national governments, 3) (increasing) vulnerability of ‘customary land rights’, mainly due weak governance structures and shortcomings in the implementation of land reform policies, and 4) ‘emptiness of consultations’, hereby referring to the ineffectiveness of the Free, Prior and Informed Consent principles.

Keywords Global Land Policies · Large-Scale Land Acquisition · Code of Conduct · Institutions · Effectiveness · Soft Law

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¹ The Land Matrix database has undergone several updates since 2009 toward a public tool: *The Land Matrix Global Observatory*, hereby using an interactive map-based platform based on the concept of crowdsourcing (e.g., Anseeuw et al. 2012b; Land Matrix 2013; McLaren and Handja 2012). The public database covers land deals, with an area of 200 hectares or more, made for agricultural production, timber extraction, carbon trading, industry, renewable energy production, conservation, and tourism (Anseeuw et al. 2012a; Land Matrix 2013, 2014).

² As of 6 May 2014: including 1,210 transnational deals (Concluded: 947, Intended: 186, Failed: 77) covering an area of more than 58 million hectares, and 412 domestic deals (Concluded: 364, Intended: 31, Failed: 17) covering an area of nearly 11 million hectares (Land Matrix 2014).

³ Country group categorization according to the World Bank classification system: <http://data.worldbank.org/about/country-classifications>. Accessed 6 May 2014.

Abbreviations

AFA	Asian Farmers' Association for Sustainable Rural Development
AfDB	African Development Bank
AU	African Union
BIT	Bilateral Investment Treaties
CFS	Committee on World Food Security
CoC	Code of Conduct
COPROFAM	Confederación de Organizaciones de Productores Familiares del MERCOSUR
EU	European Union
EIA	Environmental Impact Assessment
EPA	Economic Partnership Agreement
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign Direct Investments
FIAS	Foreign Investment Advisory Service
GHG	Greenhouse Gas
GLP	Global Land Policies
GRAIN	Genetic Resources Action International
ICAS	Initiatives in Critical Agrarian Studies
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFPRI	International Food Policy Research Institute
ILC	The International Land Coalition
IMF	International Monetary Fund
IO	International Organization
LPI	Land Policy Initiative
LSLA	Large-Scale Land Acquisition
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
OI	The Oakland Institute
RAI	Responsible Agricultural Investment
ROPPA	Le Réseau des Organisations Paysannes et de Producteurs de l'Afrique de l'Ouest
UNCTAD	UN Conference on Trade and Development
UNECA	UN Economic Commission for Africa
UNEP	UN Environment Programme
WBG	The World Bank Group
WHO	World Health Organization

1. Introduction

Land deals are often part of a complex system, involving a wide range of actors (state and non-state) at different governance levels. The regions East Africa, West Africa and South-East Asia are mostly targeted while small-scale farmers remain the mainly targeted group (Land Matrix 2013). Large-scale land acquisition is assumed to be a typical North-South problem, however increasingly driven by emerging South-South economies like Brazil, China, India and the Gulf States in search for alternative ways in securing their food and fuel supply in the nearby future. New evidence supports the argument that local and national governments and elites are largely initiating and facilitating these land deals, driven by European and Northern American investors in order to meet (renewable) energy and commodity demands in the nearby future (e.g., Deininger et al. 2011, p. 62; Faye et al. 2011; Hilhorst et al. 2011; Cotula 2013), as stated by Cotula (2013, p. 11): '[i]t is mainly about meeting demand for energy and consumption goods in richer countries and about speculation linked to rising land values. Fuel, wood, fibre and finance, more than food, are the engines of the renewed interest in agricultural investments in the global South'.

The European Union (EU) has set its own '20-20-20'⁴ sustainability target, including mandatory renewable energy targets to be achieved by 2020: 1) an overall share of 20% of the total EU energy consumption by renewables, 2) a minimum target of 10% for the share of biofuels, as a substitute for diesel and petrol, in the transport sector to be achieved by all Member States in 2020 (EU 2009). Since most land deals are biofuel oriented (§ 3.3), this could lead to price fluctuation and direct land use changes⁵ leading to an increase of CO₂-emissions, erosion, water shortages (Gerbens-Leenes et al. 2013) and food insecurity, hereby directly affecting local populations largely depending on their lands for food supply. After severe criticism, the EU published a proposal in October 2012 to limit global land conversion for biofuel production by means of limiting the 10% target to 5% (EU 2012). The aim of the proposal is to specifically focus on biofuels that deliver significant greenhouse gas (GHG) savings and to report indirect land-use change emissions.

Specifically in Africa domestic investors, represented by local and national governments and elites, are initiating and facilitating large-scale land deals, hereby negatively affecting local communities and small-scale farmers (Cotula 2013)⁶. As stated by Borras and Franco (2010a, p. 519) '[...] it is at the local level that local elites and bureaucrats who stand to gain in new investments can easily manipulate negotiation processes and where local communities of the poor can easily be isolated from their potential national allies' [...] 'power imbalances between social classes are likely to benefit local elites, not the rural poor' (Borras and Franco 2010b, p. 11).

In an attempt to legitimize and regulate the global land grab, several major international organizations: the World Bank Group (WBG) and consortium, the Committee on World Food Security of the Food and Agriculture Organization (CFS-FAO), the European Union (EU), and the African Union (AU) have developed 'voluntary principles and guidelines' (FAO et al. 2010; EU 2004; AU et al. 2010; FAO 2012), also referred to as 'codes of conduct' or 'soft law'. The effectiveness of these voluntary guidelines is however increasingly being questioned due to: (a) their voluntary character, (b) a dramatic increase of the involvement of national actors, hereby outweighing 'foreign' investors, (c) an increase in the vulnerability of customary land rights, and (d) the

⁴ http://ec.europa.eu/clima/policies/package/index_en.htm. Accessed 6 May 2014.

⁵ Woods and wetlands are however according to the EU Renewable Energy Directive (EU 2009) excluded for the production of biofuels.

⁶ See also: <http://www.iied.org/african-land-deals-policy-shift-underway>. Accessed 9 November 2013.

negative connotation surrounding these principles, mainly caused by severe criticism from NGOs and civil society organization after the release of the 2009 WBG RAI Principles for Responsible Agricultural Investments.

2. Problem Definition

The voluntary guidelines, as established by the four international institutions, are fore mostly seen by the WBG and other (foreign) investors as a new ‘development opportunity’ (Borras and Franco 2010a; FAO et al. 2010; Deininger 2011; Deininger et al. 2011; Cotula 2013), in where ‘investors profit and ‘host’ nations benefit from economic development, improved agricultural infrastructure, and employment opportunities’⁷ (OI 2011, p. 1). This ‘investment boost’ is often justified by (foreign) investors for several reasons: (1) institutional reform is the main driver behind this narrative, because it is assumed that targeted countries often have weak land governance⁸ systems (Deininger 2011), due to a ‘lack of clear property rights’, which discourages foreign investors (Borras and Franco 2010a; FAO et al. 2010), (2) these Foreign Direct Investments (FDI) are highly appreciated by the governments of ‘host countries’ (Zoomers 2011), and (3) land deals are often being justified because the land is categorized as ‘reserve agricultural land’ (Cotula et al. 2009). Questions can however be asked about the practical credibility of these statements.

First, to start with the latter, evidence has shown that these so called ‘communal lands’, often referred to by investors as abandoned, unused, marginal, idle, underutilized or degraded lands, often belong to rural farmers by means of informal entitlements (Von Braun and Meinzen-Dick 2009; Cotula et al. 2009; Sulle and Nelson 2009; Borras and Franco 2010a; Cotula 2013). A wide range of literature furthermore shows that these informal local entitlements, often referred to as ‘customary rights’, have little legal ground and do not guarantee safety from land grabs⁹¹⁰ (e.g., Cousins 2009; Vermeulen and Cotula 2010a; Alden Wily 2011, 2011b; Zoomers 2011; Cotula 2013). Evidence furthermore shows that poor countries with weak land governance structures are more frequently targeted by (foreign) investors (Anseeuw et al. 2012a; Arezki et al. 2013). An explanation can be found in the fact that ‘investors are interested in countries that combine a strong general institutional framework, that protects their investment and allows them to smoothly operate their business, with low land tenure security that gives them easy and possibly cheap access to land’ (Anseeuw et al. 2012a, p. 11).

Land in Africa is furthermore often owned by the state (Cotula 2011, 2013). The origins of current African weak local land governance structures date back to colonial history where (old) local legal rights were often not recognized by the colonial governments (Colson 1971; Cotula 2013). Cotula (2013, p. 120-121) furthermore argues that ‘[...] once a piece of land becomes of outside interest, legal options for local people to defend their rights, negotiate a fair deal and hold governments and companies to account are severely constrained, not only by entrenched power imbalances, but also by the weak rights that villagers have under both national and international law’, and ‘[...] the pace of the reforms that would be needed in order to put in place the required systems is likely to be painfully slow – because of politics as well as technical challenges’. And when projects fail the land is usually not returned to its original owners (Cotula 2013). Land expropriation due to LSLA is

⁷ It is widely acknowledged that China for example usually brings its own people (e.g., Zoomers 2012). Based on the WBG report and research in Indonesia, Li (2011) elaborates further upon the labour perspective and concludes that poverty reduction is a very unlikely result of LSLA.

⁸ ‘Land governance is understood as the formal and informal rules, mechanisms, processes and institutions through which land is accessed, used, controlled, transferred, and land-related conflicts are managed. It encompasses, therefore, land tenure systems, land and agrarian reforms, and land administration’ (Amanor 2012, p. 3).

⁹ Personal communication with Prof. Pauline E. Peters, Center for International Development, Harvard University, 12 May 2013.

¹⁰ See furthermore Cotula 2013, chapter 4 ‘Land grabbing in the shadow of the law’, for an extensive discussion on the influence and role of African law in land grabbing.

frequently being reported (Cotula 2013). The Land Matrix database mentions 40 cases of displacement (Anseeuw et al. 2012a)¹¹. In Mozambique for example a planned 30,000 hectares park for sugarcane production, including job possibilities for the local community, has eventually led to the eviction and resettlement of the villagers. The promised land was allocated to a private investor (Cotula 2011), although Mozambican law is supposed to protect local land rights (for example through mandatory local consultations), even if they are ‘not formally registered’ (Alden Wily 2011; Cotula 2013, p. 90). Alden Wily (2011, p. 35) blames this partly on the ‘lack of institutional coordination’ of the Mozambican government. In China, where most of the land is owned by the state, land expropriation due to domestic land grabbing has led to forced migration of rural populations to urban areas (Siciliano 2012). In India land transactions are often concluded by means of the involvement of a ‘second partner’, which make the initial investor, and subsequently the investment, untraceable¹². This could be an explanation for the fact that the Land Matrix database only registered 10 (foreign) investment deals in India (Land Matrix 2014, as of 6 May 2014).

Next to the negative connotation surrounding land reform policies, they can also lead to ‘[...] *significant shifts in the balance of power in state–people property relations*’ (Alden Wily 2000, p. 1): ‘[...] the nature of state power itself is altered, each time settling a little nearer to the landholder, who in turn is forced and empowered to be a little less passive in his or her relation to the state’ (*ibid*, p. 4). Exceptions to the rule, where land reform seems to have a positive outcome for the rural communities, are: Benin, Burkina Faso, and Tanzania in where ‘[...] community-level land bodies are both democratically elected and endowed with significant powers, including the regulation of land disposition within the local area and issuing certificates of title to landholders’ (Alden Wily 2011, p. 57).

The above reveals how complex land deals in practice are¹³. Although several initiatives to protect local land rights through land reform policies and projects were taken, in practice¹⁴, local governance structures often remain weak due to ‘shortcomings in implementation’ (De Jager, 2009; Alden Wily 2011; Cotula 2013, p. 27).

There were many attempts to strengthen customary land rights through law and land reform policies, however often not very successful¹⁵. As argued by Cotula (2013, p. 91-92), ‘[...] local rights remain weak and insecure, partly because of gaps in legislation’ and ‘[...] even where local rights are protected, national law typically enables the government to expropriate land for commercial projects’.

Criticism by NGOs and civil society organizations is mainly focussed on the WBG helping corporations and investors invest in cheap land in developing countries at the expense of local communities, the environment, and farm groups (Vidal and Provost 2012). This argument is strengthened by the strategy of the International Finance Corporation (IFC), and the Foreign Investment Advisory Service (FIAS), both part of the WBG, providing technical as well as advisory services to governments in developing countries, promoting an ‘efficient land market’ strategy, encouraging developing countries in simplifying processes, which makes it relatively easy for

¹¹ 25 cases have led to evictions of 1,000 people or more, which includes 10 cases of the eviction of more than 10,000 people (Anseeuw et al. 2012a, p. 41-42, Figure 26).

¹² Interview with M.G. Bastos Lima, PhD student at the Institute for Environmental Studies, VU University Amsterdam, The Netherlands, conducted on June 28, 2012.

¹³ Borrás and Franco (2010b) offer an analytical guideline into the complexities of current land policy discourses, including etymological discussions.

¹⁴ For case study examples see: *Malawi*: Peters and Kambewa 2007, *Sierra Leone*: Peters and Richards 2011, *South Africa*: Hall 2009, *Tanzania*: Shivji, 1998, *Uganda*: Green 2006 (Green focuses mainly on the role ethnicity played in the failure of land tenure reform in Buganda, Central Uganda), *Zimbabwe*: Scoones et al. 2011, Hillhorst et al. 2011 for a survey in Benin, Burkina Faso & Niger.

¹⁵ Based upon a study of more than 70 laws in Eastern and Southern Africa. Another paper by Alden Wily (2003) examines land decentralization processes in 20 countries in East, West and Southern Africa. Cotula (2011) explores in detail the key features of land deals (who is involved: Fig. 1, p. 20) and their wider legal frameworks, based on an analysis of 12 land contracts in Africa.

foreign investors to gain access to land (Daniel and Mittal 2010; De Schutter 2011a). FDI are furthermore encouraged due to the protection of investors' rights, under international law under investment and trade agreements, strengthening hereby [...] the legal value of individual contracts by making their violation a breach of international law' (Graham et al. 2010, p. 6). Bilateral Investment Treaties (BIT), and Economic Partnership Agreements (EPAs) are example of such instruments, highly promoted by the EU. The BITs 'usually include provisions that strengthen the legal power of the investors', and '[...] subsequently weaken the policy space for national states and the power of host local communities' (Graham et al. 2010, p. 6). The EPAs '[...] provide further incentives for land grabbing by curtailing the respective States' policy space to protect their resources and markets for domestic use' (Graham et al. 2010, p. 6).

Despite efforts of the WBG to regulate various crises since 2008 with proper policies, these measurements are in fact '[...] leading to trends that increase instability rather than provide security and opportunity' (Daniel and Mittal 2010, p. 30).

Some scientists remain quite skeptical of a code of conduct for several reasons. First of all they are 'not embedded in a political analysis of how they might actually work in practice' (Borras et al. 2011, p. 210). The WBG report furthermore 'does not address the fundamentally important questions of who wins, who loses and why, and what are the social, political, and ecological drivers and consequences of these processes?' (Borras et al. 2011, p. 210). Next to the 'reserve land' and 'land property rights' discussion, CoCs Codes of Conduct are mainly criticized by scientists on the following aspects: (1) 'The food and energy investments brought about by the recent mega land deals will not solve the food and energy crises in the world and might even worsen them', (2) The assumption that decentralized-localized formal and transparent multi-stakeholder land transactions are the solution to avoid negative effects of large-scale land deals is only partly correct. The representation of social groups is particular problematic, since local elites often seize power. (3) Violations are difficult to make accountable due to the voluntary character of the COCs, and (4) An unrealistic vision on 'partnerships', 'assumed to promote transparency and build win-win outcomes into any land deals' (Borras and Franco 2010a, p. 515-521). Zoomers (2010, p. 443) advocates that 'processes of land grabbing are broader and deeper than assumed, and codes of conduct or contractual arrangements will neither help to stop nor turn the tide', because 'many countries neither have legal or procedural mechanisms in place to protect local rights, nor take into account local interests, livelihoods or welfare'.

The recently endorsed FAO-CFS Voluntary Guidelines (VG) and the African Union Framework and Guidelines are seen as an important step to combat 'land grabbing', albeit not exclusive. Most parties agree with combining a code of conduct, principles and/or guidelines for global land policies with (existing) binding instruments of international human rights law. Combining the FAO VG with national and international enforceable laws and regulations on land investments and related policy fields like trade is also frequently mentioned, next to the incorporation of the 2006 ICARRD principles.

Considering the above, this paper therefore focuses on answering the following research question:
'How effective are, and under what conditions can Global Land Policies on Large-Scale Land Acquisition be effective?'

3. Global Land Policies (GLP)

3.1. Introduction

Due to the problems arising from LSLA, several multilateral institutions have developed Global Land Policies (GLP) in an attempt to govern the ‘global land grab’. In 2004 the European Union (EU) has developed Guidelines for support to land policy design and land policy reform processes in developing countries (EU, 2004). The World Bank Group (WBG) developed their RAI *Principles for Responsible Agricultural Investments* in 2009, in consortium with FAO, IFAD and UNCTAD (FAO *et al.*, 2010), based on an already existing Code of Conduct framework for foreign land acquisition by the International Food Policy Research Institute (IFPRI) (Von Braun and Meinzen-Dick 2009). Regional and national initiatives started to emerge as an answer to the developments in the international land policy discourse. The African Union developed, in 2009, jointly with the African Development Bank (AfDB) and the UN Economic Commission for Africa (ECA), a ‘Framework and Guidelines on Land Policy’ to strengthen land rights, enhance productivity and secure livelihoods (AU *et al.* 2010).

Table 1 Establishment Global Land Policies EU, WBG, FAO-CFS, AU.

	<i>EU (LPG)</i>	<i>WBG (RAI)*</i>	<i>AU (F&G)</i>	<i>FAO (VG)</i>
<i>Endorsed</i>	2004	2009	2009	2012

Sources: EU 2004; AU *et al.* 2010; FAO *et al.* 2010; FAO 2012

*Not formally endorsed, the status of the RAI Principles still remains ‘draft’

On May 11th, 2012, during its 38th session, the FAO Committee on World Food Security (CFS) has endorsed the ‘Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security’ (FAO, 2012).

3.2. European Union Land Policy Guidelines

In 2004 the European Union developed ‘EU Land Policy Guidelines’ to support land policy design and land policy reform processes in developing countries (EU 2004). The EU land policies focus primarily on ‘land policy reforms’, since ‘[l]and policy reform can make substantial contributions to poverty reduction, in removing obstacles on access to land for the poor, in giving them legal rights and access to credit through collateral, in giving people access to assets and economic opportunities linked to agriculture or natural resources, in forbidding land grabbing, encroachment and other processes of exclusion’ (EU 2004, p. 20). The EU key principles for a successful land policy design are given in Table 2.

Table 2: EU key principles for successful policy design

<i>No.</i>	<i>Principle</i>
1	Learn from local land policies to encourage greater growth, equity or environmental sustainability
2	Long term processes
3	Promote inter-ministerial work, with in-depth analysis of current situations
4	Promote a participatory approach to policy making
5	Take into account the distance between statutory law and local practice
6	Identify key principles and allow for diverse solutions within them
7	Take implementation costs into account in the design of land tenure reform measures
8	Carefully craft the rules and tools
9	Recognize that the impact of reform depends on changes in practices and not on the legal texts alone
10	Ensure widespread dissemination of information on the scope and content of the reform as well as on the policy, legislation and

- procedures
- 11 Gender issues need a careful approach
 - 12 Policy provision to increase access to land by women must be accompanied by the necessary support mechanisms to enable them to access, control and utilize land successfully
 - 13 The rights of minorities and indigenous peoples are to be adequately recognized
 - 14 Land policy has to include sound land use planning

Source: EU 2004, p. 17-19

The EU report underlines the important relationship of land tenure with other major policy areas (poverty reduction, citizenship, human rights & social justice, gender equality, agricultural development, conflicts & post-conflict recovery, land administration and governance, local government & decentralization, taxation, environment, and land use planning), and the role of different stakeholders (central & local government, private sector, civil society groups, local communities, and donors) in implementing land policies (EU 2004).

3.3. WBG Principles of Responsible Agricultural Investments (RAI)

In 2009 the International Food Policy Research Institute (IFPRI) initiated the concept of a 'code of conduct' for foreign land acquisition (Von Braun and Meinzen-Dick 2009). Building further upon the IFPRI Code of Conduct (Von Braun and Meinzen-Dick 2009), the 2003 'Land Policy Framework', and an in-dept study 'Large-Scale Acquisition of Land Rights for Agricultural or Natural Resource-based Use', which started in 2009 in 20 most targeted countries and focussed specifically on the policy framework and social, economic, and environmental impact analysis, (FAO et al. 2010), four major international organizations: WBG, FAO, IFAD and UNCTAD, joined together to develop seven 'Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources' (Table 3), also referred to as the RAI Principles (RAI 2012). It is however important to notice that the WBG RAI principles have never been formally endorsed (CFS 2011a).

Table 3: WBG RAI Principles

<i>No.</i>	<i>Aim</i>	<i>Principle</i>
1	Respecting land and resource rights	Existing rights to land and associated natural resources are recognized and respected.
2	Ensuring food security	Investments do not jeopardize food security but strengthen it.
3	Ensuring transparency, good governance, and a proper enabling environment	Processes for acquiring land and other resources and then making associated investments are transparent and monitored, ensuring the accountability of all stakeholders within a proper legal, regulatory, and business environment.
4	Consultation and participation	All those materially affected are consulted, and the agreements from consultations are recorded and enforced.
5	Responsible agro-investing	Investors ensure that projects respect the rule of law, reflect industry best practice, are economically viable, and result in durable shared value.
6	Social sustainability	Investments generate desirable social and distributional impacts and do not increase vulnerability.
7	Environmental sustainability	Environmental impacts of a project are quantified and measures are taken to encourage sustainable resource use while minimizing and mitigating the risk and magnitude of negative impacts.

Sources: FAO et al. 2010; Deininger et al. 2011

3.4. African Union Framework and Guidelines on Land Policy

In April 2009 African Union Heads of State adopted the 'Framework and Guidelines on Land Policy: a Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods', a joint initiative by the African Union (AU), the African Development Bank (AfDB), and the UN Economic Commission for Africa

(ECA), with the aim ‘to promote Africa’s socioeconomic development, through inter alia, agricultural transformation and modernization’ (AU et al. 2010, p. xi). The Land Policy Initiative (LPI) and the European Union help in facilitating the implementation of the guidelines (AU et al. 2010; Graham et al. 2010).

Table 4: AU Framework and Guidelines on Land Policy in Africa

<i>No.</i>	<i>Element</i>
1	Offer a basis for commitment by African member states to the formulation and operationalization of sound land policies as a basis for sustainable human development that includes assuring social stability, maintaining economic growth and alleviating poverty and protecting natural resources from degradation and pollution.
2	Promote consensus for shared principles as the basis for securing access to land for all users, enhancing agricultural productivity and sustaining livelihoods.
3	Underscore the need for popular participation in land policy formulation and implementation so as to facilitate improved governance of land resources.
4	Suggest standards for best practices for land policy reforms and benchmarks for the performance of land institutions that member states can adopt in keeping with their respective contexts.
5	Articulate a policy framework for addressing emerging issues and anticipating future trends relating to land resources.
6	Provide a basis for more coherent partnership between states, citizens and development partners in land policy formulation and implementation on the continent.
7	Establish general principles for engaging development partners for the purposes of mobilizing resources for building capacities for transformative land policy reform processes.
8	Develop guidelines for regional convergence on the sustainable management and utilization of land and associated resources shared by two or more member states in various parts of Africa.

Source: AUC et al. 2010, p. 2

Next to providing a framework with guidelines (Table 4), the document also offers an historical, political, social and economic insight in African land policies. The framework and guidelines have been compiled through an extensive consultation process, which started in 2006, involving the participation of African stakeholders ranging from civil society organizations, NGOs, government agencies, Regional Economic Communities (RECs), practitioners and researchers.

3.5. FAO Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests

The Committee on World Food Security (CFS) is one of the governing bodies of the UN FAO (CFS 2012), with the aim to coordinate a global approach to food security. In 2009 the CFS has improved its institutional structure by including a wider group of stakeholders to gain more strength in promoting food policies worldwide. The ‘Voluntary Guidelines (VG) on the Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security’ seek to improve the governance of land tenure and fisheries and forests, with a specific focus on vulnerable and marginalized people (FAO 2012).

The VG are subdivided into seven main parts that can be read as operational guidelines, based on five General Principles for Responsible Governance of Land Tenure (FAO 2012, p. 3): (1) Recognize and respect all legitimate tenure right holders and their rights, (2) Safeguard legitimate tenure rights against threats and infringements, (3) Promote and facilitate the enjoyment of legitimate tenure rights, (4) Provide access to justice to deal with infringements of legitimate tenure rights, and (5) Prevent tenure disputes, violent conflicts and corruption. Guidelines for the implementation process are given in Table 5.

Table 5: FAO-CFS Principles of Implementation

<i>No.</i>	<i>Principles of Implementation</i>	<i>Description</i>
1	Human dignity	Recognizing the inherent dignity and the equal and inalienable human rights of all individuals.
2	Non-discrimination	No one should be subject to discrimination under law and policies as well as in practice.
3	Equity and justice	Equality between individuals may require acknowledging differences between individuals.
4	Gender equality	Ensure the equal right of women and men to the enjoyment of all human rights.
5	Holistic and sustainable approach	Recognizing that natural resources and their uses are interconnected, adopting an integrated and sustainable approach to their administration.
6	Consultation and participation	Engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions.
7	Rule of law	Adopting a rules-based approach through laws consistent with national and international law, and voluntary commitments.
8	Transparency	Policies, laws and procedures in applicable languages and formats accessible to all.
9	Accountability	Holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles rule of law.
10	Continuous improvement	Improvement of mechanisms for monitoring and analysis of tenure governance by states to develop evidence-based programmes and secure on-going improvements.

Source: FAO 2012, p. 4-5

The VG were established, taking into account existing frameworks addressing ‘human rights’ and ‘tenure rights’, such as the RAI principles (CFS 2011b), the ‘Minimum Human Rights Principles’, developed by UN Special Rapporteur on the Right to Food in 2009, to ‘address the human rights challenge of large-scale land acquisitions and leases’ (De Schutter 2009; 2011a, p. 253; CFS 2011a), the ‘Voluntary Guidelines on the Right to Food’, and the ICARRD Principles (FAO 2012). The VG guidelines were developed as a result of an extensive consultation process, regionally as well as worldwide, amongst a wide range of actors from the public and private sector, civil society and academic world (FAO 2009, 2012).

4. Theoretical Framework

4.1. Soft Law

As stated in the introduction, the global land policies under investigation are based on voluntary non-binding commitments, also referred to as ‘soft law’.

Nowadays most international law can be considered as ‘soft’ (Abbott and Snidal, 2000), a result of the development and expansion of a ramified framework of institutions after WWII, a rapid increase of the ‘UN family’ of organizations, an increase of NGOs, and the evolution of the world economy and state interdependency (Dupuy 1991, p. 420-421). Abbott and Snidal (2000) argue that international actors often decide on purpose to use softer forms of legalization, as superior to ‘hard law’. The soft law concept fits within the current dynamics of a decentralized and globalized world, as formulated by Dupuy more than twenty years ago (1991, p. 534): ‘soft law is a sign and product of the permanent state of multilateral cooperation and competition among the heterogeneous members of the contemporary world community’.

Soft law can be subdivided in two categories: ‘legal soft law’ and ‘non-legal soft law’ (Chinkin 1989). Legal soft law refers to norms in the form of treaties, including ‘soft’ obligations. Non-legal soft law refers to non-binding or voluntary resolutions and instruments like ‘codes of conduct’, broadly accepted and often embedded in international principles.

Depending on its applicability, soft law instruments vary in their level of abstraction; they either have a high

level of abstraction and generality or are very specified and ‘extremely narrow in subject matter’¹⁶ (Chinkin 1989, p. 852). The latter seems to benefit the *effectiveness* of the instruments. According to Kolk and Van Tulder (2005, p. 9) ‘[t]he more specific the codes are, the better can they be measured and, subsequently, monitored’, and conversely monitoring is ‘expected to enhance codes’ comprehensiveness and compliance likelihood’.

Skjærseth et al. (2006) explore the relationship between soft law, hard law and *institutional effectiveness*. One of their main conclusions is that ‘[...] ambitious norms are more easily achieved in soft law institutions than in legally binding ones’, mainly due to ‘the greater flexibility offered by soft law instruments’ (Skjærseth et al., p. 118).

4.2. Transparency, Accountability and Legitimacy

The shift toward more decentralized governance systems in the last decades brings problems of transparency, accountability, and legitimacy (Kersbergen and Van Waarden 2001, 2004; Biermann and Gupta 2011). Climate change, as a relatively new challenge, will put a severe pressure on these institutions. Particularly issues of *accountability* and *legitimacy* are still an underdeveloped research area in current global climate governance discourse (Biermann and Gupta 2011). These three elements, their complexities and inter linkages are important determinants toward more *effective* climate governance regimes.

Transparency

Transparency is of great importance in negotiations over land deals. According to Cuffaro and Hallam (2011, p. 1) ‘the lack of transparency and incompleteness of contracts’ in large foreign land deals is problematic, as several case studies imply (ch. 3.2). Transparency of administrative processes by means of a clear format for information reporting is mentioned as a solution to increase transparency, additionally it enhances the process, reduces transaction costs and the likelihood of conflicts (Deininger et al. 2011).

In theory *governance transparency* mechanisms interrelate with *disclosure of information* strategies and initiatives (Gupta, 2010; Mitchell, 2011). Transformative potential of governance by information disclosure is however limited, but can work in conjunction with other mechanisms (Gupta, 2010).

Mitchell (2011) distinguishes two types of transparency for governance policy mechanisms: (1) disclosure-based transparency, and (2) education-based transparency. Both aim at influencing an actors’ behaviour through information dissemination. Mitchell (2011, p. 1889) concludes that the influence of both strands is quite small since ‘[...] information is usually a weak cause of behaviour’.

Accountability

Accountability refers to ‘the willingness to accept responsibility or to account for one’s actions’ (Biermann and Gupta, 2011, p. 1857).

Within accountability theories an important distinction can be made into internal and external accountability, in where external accountability is related to normative assumptions as in ‘[...] people outside the acting entity, whose lives are affected by it’ (Keohane 2002, p. 14-15). According to Keohane (2002) the condition of being affected is not valid to create a claim *an sich*. With respect to external applicability of transnational accountable ‘entities’, in the context of international organizations, Keohane (2002) discusses the widespread belief that

¹⁶ Chinkin (1989) hereby refers to (1) the 1981 WHO International Code of Marketing of Breast-milk Substitutes (WHO 1981), and (2) the FAO International Code of Conduct on the Distribution and Use of Pesticides 1985 (FAO 2003).

these organizations can be 'held accountable' for their actions by civil society organizations and NGO's, representing 'the affected'. These normative claims can lead to more *legitimacy* and *transparency* in institutional policies and processes.

Translated toward practical applicability, accountability can be directly linked to issues of 'procedural fairness', by means of: (1) transparency and information sharing; (2) monitoring and reporting mechanism; (3) balanced representation of stakeholders ('participatory accountability') (Bäckstrand, 2008, p. 98).

Legitimacy

Legitimacy can be linked to norms, rules, sanctions, and legality. According to Schouten and Glasbergen (2011) *legality* is an important precondition for legitimacy. Legitimacy can be described as '[...] being in accord with established legal norms and requirements, or conforming to recognized principles or accepted rules and standards of behaviour' (Biermann and Gupta, 2011, p. 1858).

With respect to (formal) land rights, Deininger (2003, p. xxiii) argues that specifically in Africa 'the gap between *legality* and *legitimacy* has been a major source of friction, something that is illustrated by the fact that often more than 90 percent of land remains outside the existing legal system' due to 'failure to give legal backing to land administration institutions that enjoy social legitimacy'. Institutions however have also proven to be ineffective if they are in fact legal, but without social recognition.

An interesting distinction within the *legitimacy* discourse is between input and output legitimacy. Output legitimacy (i.e. governability) refers to the level of success of specific policies (in this case) as a precondition for being legitimate (Kersbergen and Van Waarden 2004).

4.3. Effectiveness

Research on the effectiveness of international environmental regimes has been subject to debate in global environmental governance literature for over 30 years (Young 2011). In solving environmental problems, governance systems seem to work well on the national level, but overall fail on international, transnational, and global levels (Young 2011). An institution can be considered effective if it meets the following criteria: (1) changes the behaviour of states and member parties in an intended direction, (2) solves the (environmental) problems it was designed to solve, and (3) do so in an efficient and equitable manner (Bernauer 1995, p. 358).

Based upon the previously defined theories of *transparency*, *accountability*, and *legitimacy*, for this research, the Bernhauer's definition will be applied as global land policies being considered effective under the following conditions (1) proper disclosure of information in the global land policy process is leading to more transparency and behavioural changes¹⁷; (2) institutions being held accountable for their actions by civil society organizations and NGO's, thus seen as more successful (i.e. legitimate); (3) these normative claims subsequently lead to more *legitimacy* and *transparency* in institutional policies and processes.

5. Institutional Framework

Methodologically, this research is based on a *comparative analysis*, testing the effectiveness of global land policy schemes from four institutions: (1) the European Union, (2) the World Bank Group and consortium, (3) the Food and Agriculture Organization, and (4) the African Union.

¹⁷ Behavioural change can in this context be understood as the result (outcome) of implementing a regime (Miles et al. 2001), in the context of this research, referred to as a *global land policy regime*.

The research question will be tested dependently as well as independently in the pursuit to achieve optimal results. A comprehensive institutional framework (*dependent analysis*) therefore forms the basis of this research. A literature review will seek to find explanations for the effectiveness of GLP qualitatively (*independent analysis*).

5.1. Key Variables & Operationalization

In order to make a statement on the effectiveness of Global Land Policies, this chapter offers an institutional framework, in where, based on theoretical evidence, the dependent and independent variables and corresponding criteria and indicators have been defined. An institutional framework (Table 7) forms the basis for the institutional analysis. A positive ‘causal’ correlation between the *independent variables* x_1 , x_2 , x_3 , et cetera and the *dependent variable* effectiveness (y) has led to the formulation of twelve hypotheses under the following conditions:

‘The more x , the more y ’¹⁸

The twelve hypotheses can be defined as:

h_1 = The *higher* the transparency (x_1) of the institutions’ Global Land Policies the *more effective*;

h_2 = The *more* legality (x_2) the institutions’ Global Land Policies embrace, the *more effective*;

et cetera.

5.1.1. Independent variables: The Institutional Framework

The institutional framework for analyzing and comparing global land policies for the four IOs (EU, WBG, FAO & AU) is presented in Table 7. Based on a literature review¹⁹, the x variables (set of causal combinations) are divided into three main clusters: ‘Content’, ‘Participatory’, and ‘Measure’.

5.1.2. Dependent variable: Effectiveness

Referring back to the formulated research question, y is hereby defined as *Effectiveness of Global Land Policies*. Explanations for effectiveness can be found qualitatively. Based on a state-of-the-art literature review, social and environmental criteria of effectiveness have been selected (Table 6).

All four criteria are interrelated, therefore the inter linkages will be discussed, specifically with regards to the impact and effects of large-scale land transactions on targeted countries and affected populations, groups, and/or individuals.

Table 6: Social and Environmental Criteria of Effectiveness

Category	No.	Criteria
Social & Environment	1	Support of the poor
	2	Ensuring energy security
	3	Prevent displacement (loss of livelihoods)
	4	Environmental sustainability

Source: author’s own interpretation

¹⁸ It is expected that a reverse construction (*the less x , the more y*) will be applicable for H_7 (addressee): *the less global, the more effective*.

¹⁹ Kolk and Van Tulder (2005) developed a comprehensive model to analyze and compare ‘codes of conduct’ for international organizations. This model was first introduced in 1999 (Kolk, Van Tulder, and Welters). In developing an institutional framework for global land policies parts of this model have been used, specifically with regards to the classification framing of the hypotheses: h_5 , h_6 , h_7 , h_{11} & h_{12} , categorized under the ‘operationalization’ section in Table 7.

Table 7: Institutional framework to analyze and compare Global Land Policies on Large-Scale Land Acquisition

	<i>Independent variables</i>	<i>Indicator</i>	<i>Operationalization</i>
C O N T E N T	Quality of Standards	1) Transparency	1) Transparency in negotiations, and contracts; availability of, and access to information
		2) Legality ²⁰	2) Regulatory requirements/legality (norms/rules) available, including the legal protection of local land rights
		3) Technical guidelines	3) Level of direct applicability of the GLP principles and guidelines
		4) Specific in subject matter	4) Level of detail: Extremely narrow and specific in subject matter (Chinkin 1989, p. 852; Kolk and Van Tulder 2005, p. 9)
	Quantitative Standards	Issues quantified	Issues addressed* Level of quantification: % of issues quantified: >90% (predominant); 51%-90% (majority); 25%-50% (medium); 10%-25% (minority); <10% (few); none (no)
	Time horizon	Defined timeframe(s)	Clearly defined timeframe(s) for implementation and operationalization
P A R T I C I P A T O R Y	Addressee	Geographic scope / focus group	Focus group/area of the established criteria/principles. global (weak); nearly global (low); general region (moderate); specific country (strong).
	Role of government (local/national)	Local, national involvement	Involvement of local/national governments in the establishment of the criteria/principles
	Participation	Stakeholders involvement ²¹	(proper)consultations to create a wider support: local (land owners), (principles local consultation: Cotula et al. 2009, p. 105), national/ governmental (FAO 2003), regional, NGOs
	Implementation	Level of implementation (criteria), and operationalization	1) Formulation of operational criteria or guidelines; 2) Adherence with local, regional or national policies
M E A S U R E	Monitoring	Monitoring system embedded in criteria	Good insight into system and process (clear); reference to some parts, but criteria or timeframes are lacking (clear to vague); only general reference to monitoring without details (vague)
	Sanctioning	Sanctioning mechanism embedded in criteria	See <i>monitoring</i>

Source: authors' own analysis, based on: Chinkin 1989; Kolk, Van Tulder, and Welters 1999; Van Tulder and Kolk 2001; FAO 2003; EU 2004; Kolk and Van Tulder 2005; Von Braun and Meinzen-Dick 2009; Cotula et al. 2009; AU et al. 2010; FAO et al. 2010; Deininger et al. 2011; Meier 2011; OI 2011; FAO 2012; Polack et al. 2013.

* Focus not only on production of food and biofuels for export purposes (although most important according to Land Matrix database (Land Matrix 2013, see also §1.1), but on all seven processes driving the current 'global land grab' (Zoomers 2010, p. 434-440): (1) Offshore farming; FDI in food production, (2) FDI in non-food agricultural commodities and biofuels, (3) Development of protected areas, nature reserves, ecotourism and hideaways, (4) SEZs (Spezial Economic Zones), large-scale infrastructure works, urban extensions, (5) Large-scale tourist complexes, (6) Retirement and residential migration, and (7) Land purchases by migrants in their countries of origin. The Tanzanian government and private partners invest for example largely in tourism in its own country (Gardner 2012; Land Matrix 2013). An argument for investing in tourism is that it 'offers possibilities for rapid economic growth' (Zoomers 2010, p. 438).

²⁰ This indicator is closely related to the stakeholder involvement indicator. Polack et al. (2013, p. 15) identify (1) Recognition of customary rights, and (2) Consultation or FPIC legally required as a condition for land allocation, as preconditions for the 'legal protection of local land rights' (indicator of political and legal accountability).

²¹ FAO et al. (2013, p. 8) identify FPIC as 'a key component of effective stakeholder engagement and consultation'.

Social criteria

There is growing evidence that climate change puts a severe burden on agricultural productivity (Cotula et al. 2009; Hertel et al. 2010; IFPRI 2012: 39), leading to droughts, water shortages, food insecurities, eventually resulting in the loss of livelihoods.

Competition over land and weak tenure governance can deteriorate into serious conflicts, leading to all sorts of problems (OI 2012b). People are often forced from their ancestral lands by corrupt governments, while land is being leased (often for a long period) to foreign companies, increasing poverty and hunger. According to Breisinger et al. (2012, p. 32) *'[...] natural resource scarcity plus projected strong impacts of climate change may also exacerbate conflicts'*. A recent survey by Global Witness (2012) finds a sharp rise in killings over land and forests in the last decade, specifically in Brazil, Peru, Colombia and the Philippines.

The 2008 food crisis has led to a 'global rush' for land to secure countries' energy and food supply in the near future, leaving specifically Arab countries extremely vulnerable to water and food insecurities (Breisinger et al. 2012; IFPRI 2012, p. 80-81). African countries are increasingly affected due to water scarcity, as a result from climate change and land transactions (GRAIN 2012b; Prateek 2012). When there is little opportunity left for the inhabitants due to land loss, this often leads to increased levels of food insecurity, malnutrition, and migration to areas or countries with better living conditions. In order to support the poor sharing of benefits and respect for local land rights are of major importance, as illustrated by the Sierra Leone Malen case study (OI 2012b). Securing local land rights can offer farmers a valuable asset for negotiation (Vermeulen and Cotula 2010; Cotula et al. 2011). Business models can offer opportunities for smallholder farmers 'in countries where government land policy has created strong incentives for business to work with local groups' (Cotula et al. (2011, p. 110). Vermeulen and Cotula (2010) offer a review of business models that can provide opportunities for smallholder farmers. Land policies are an important element towards poverty reduction, stable governance, economic growth, and environmental sustainability (Deininger 2003).

Adherence to national trade policy (and/or land policies) makes it possible to respect a country's national rights. Export restrictions could for example be significant when national food security is at risk due to a disaster. Food security can also be in danger when local ecosystems are not taken into account, as for example was evident for the Malen case study in Sierra Leone (OI 2012b).

Environmental sustainability

Large-scale land transactions are often accompanied by changes in land-used. Considering the risks climate change brings toward the earth's climate and society, this extra burden needs not to be taken into serious consideration (e.g. Foley et al. 2005). Mapping and measuring the agricultural impact of land transactions through environmental and social impact analysis can be a useful tool (Cotula et al. 2011; UNEP 2011; OI 2012b). Based on empirical evidence from a multi-country study in Africa, Cotula et al. (2011, p. 104) state that *'several countries require an environmental impact assessment (EIA) or an environmental and social impact assessment (ESIA) to be carried out prior to project approval'*. To ensure environmental sustainability, UNEP (2011, p. 6) also advocates for the implementation of EIAs, supplemented by *'social impact assessments and periodic, independent inspection [...]'*.

6. Comparative Analysis

The institutional framework (Table 7), combined with a literature review of the original global land policy documents, has resulted in an institutional matrix as shown in table 8 (dependent analysis). Subsequently the twelve defined hypotheses have been tested qualitatively in a dependent as well as independent analysis. The total result of the institutional analysis is presented in table 9.

6.1. Dependent analysis

An institutional framework (Table 7) has been developed in where twelve hypotheses, spread over three clusters have been tested dependently: (1) 'Content': transparency, legality, specificity, guidelines, issues, and time; (2) 'Participatory': addressee, government, stakeholders, and implementation; (3) 'Measure': monitoring, and sanctioning.

Both the FAO-CFS and AU score relatively high with respectively scores of 9.0 and 10.0 out of 12.00, corresponding with 75% and 83% coverage of the total score. The EU scores quite moderate with 65% (7.75 out of 12), and the WBG ranks lowest with 42% (5.0 out of 12).

The dependent analysis implies that the EU, FAO-CFS, and AU guidelines are most effective, basically because the three organizations take the implementation process more seriously, by, inter alia, (1) the involvement of a wide range of stakeholders, which enhances a successful implementation, and (2) the inter linkages with other relevant policy areas like gender issues, poverty reduction and environmental security. No *sanctioning mechanisms* were found in the principles and guidelines, however all organizations link to some form of compliance with legal systems, like human rights law (Table 8 *Legality*).

The EU scores particularly very high on specificity of the guidelines and stakeholder involvement. The operational guidelines specifically focus on the role of stakeholders and donors in the implementation process of the guidelines.

Although the WBG principles advocate for 'respecting land and resource rights' (Principle 1), serious improvements can be made in the development of a legislative framework. Other improvements can be made on: the applicability of the principles ('guidelines'), the establishment of an adequate timeframe, and the development of an implementation, monitoring, and sanctioning mechanism. The geographical scope of the principles is furthermore too broad.

The FAO VG have obtained the second highest score, mainly to due to transparency in procedures, a high level of stakeholder involvement, specificity (i.e. narrowness in subject matter) of the guidelines, and a high level of issues addressed; next to fisheries and forests, inter alia, food security, equity & justice, gender, human rights, sustainability. The FAO VG furthermore discusses states' involvement and role in land transaction procedures widely, and focuses on strengthening local governments. The FAO has also developed principles for implementations, and uses multi-stakeholder platforms at local, national, and regional level to monitor the implementation, and impact of LSLA deals.

The AU framework and guidelines scores highest, mainly due to the clear description of procedures, and a solid historical background and inter linkages with other policy areas. The criteria are more regionally focussed (Northern, Eastern, Southern, Central and West Africa), and more specific in subject matter, which, as theoretical evidence implies, largely benefits the effectiveness.

Table 8 Institutional Matrix Independent Variables

	<i>Variables</i> <i>Institutions</i>	<i>EU</i>	<i>WBG</i>	<i>FAO</i>	<i>AU</i>
CONTENT	x ₁ Transparency	transparent procedures & transparent and accountable land acquisition schemes	- clear and transparent procedures - major role for civil society in helping to improve transparency	policies, laws and procedures in applicable languages and formats accessible to all	- institutions responsible for land governance act transparent/accountable - effective tracking mechanism
	x ₂ Legality	legislative framework: historical background, local land rights & law, socio-political rights, applicability of law	- respect existing land and resource rights - policies, laws, and regulations affecting investment climate benchmarked	- consistence with international rights law - legal recognition and allocation of tenure rights and duties	- harmonization with existing laws - provision of affordable and legally secure land and housing rights
	x ₃ Specificity	detailed, overview of links with other policy areas, and overview major issues, trends, and priorities per region	low, issues briefly discussed	detailed, inter linkages with issues of human dignity, non-discrimination, gender, environment, equity & justice	detailed, with a specific focus on the African regions
	x ₄ Guidelines	key principles for policy design & donors (response strategy/set of interventions) & operational guidelines, high applicability	principles for responsible agricultural investment, weak applicability	operational guidelines; general principles & implementation principles, high applicability	framework & guidelines, high applicability
	x ₅ Issues	land policy reform, gender equality, human rights, social justice, conflicts, environment, poverty reduction	land policies, institutional reform, rights, livelihoods, resources, food security, environmental sustainability	besides land tenure, focus on fisheries and forests, and important issues addressed in implementation principles	'people-driven land policies' and reform, land rights, productivity, livelihood, environment, gender issues, tourism
	x ₆ Time	In context of timetable by governments for consultation & donor interventions	None	none	- realistic timeframe government for policy review & adjustments - roadmap for a 'land policy framework' instead of timetables
PARTICIPATORY	x ₇ Addressee	developing countries	lower income countries and rural areas	vulnerable and marginalized people	African countries; regional, local
	x ₈ Government	encourage governments to participate with civil society, local communities, farmers	- provide investors with adequate inform. - involvement of local governments - governmental protection vulnerable gr.	- states' role is widely discussed, as being responsible for taking governance - strengthening local governments	- central role of African governments to ensure sustainable livelihoods - enhance dialogue with stakeholders
	x ₉ Stakeholders	land policy reform participatory; civil society, private sector, local communities	extensive consultation process, involving a broad selection of stakeholders	participatory, involving a wide range of stakeholders local/national/regional	extensive consultation, involving the 5 regions, experts, ministers, civil society
	x ₁₀ Implementation	operational guidelines to assess national policies and design an EU response strategy	n/a: the principles still need to be translated into concrete actions for investors, governments, donors & IOs	- principles of implementation - CFS global forum for assessing progress on implementation of the guidelines	- implementation facilitated by LPI/EU - tracking principles - standards for best practices/benchmark
MEASURE	x ₁₁ Monitoring	- support monitoring and evaluation of impact of reform. - 'outcome indicators' preferred - civil society engagement	- independent monitoring of principles, guidelines, governance frameworks - environmental sustainability: implementation monitoring	- monitoring implementation & impact LSLA agreements - multi-stakeholder platforms/frameworks at local, national & regional level	- tracking principles - monitoring the effects of land policy - land-related participatory monitoring & evaluation (PME) systems
	x ₁₂ Sanctioning	none	none	none	none

Sources: EU 2004; AU et al. 2010; FAO et al. 2010; FAO 20

Table 9 Outcome Comparative Analysis

	<i>Institutions</i> <i>Variables</i>	<i>EU</i>	<i>WBG</i>	<i>FAO</i>	<i>AU</i>
CONTENT	x ₁ Transparency	0.75	0.75	0.75	0.50
	x ₂ Legality	0.75	0.50	0.75	0.75
	x ₃ Specificity	1.00	0.50	1.00	1.00
	x ₄ Guidelines	0.75	0.25	1.00	1.00
	x ₅ Issues	0.75	0.75	1.00	1.00
	x ₆ Time	0.25	0	0	0.75
PARTICIPATORY	x ₇ Addressee	0.50	0.50	0.75	1.00
	x ₈ Government	0.75	0.75	1.00	1.00
	x ₉ Stakeholders	1.00	0.75	1.00	1.00
	x ₁₀ Implementation	0.50	0	0.75	1.00
MEASURE	x ₁₁ Monitoring	0.75	0.25	1.00	1.00
	x ₁₂ Sanctioning	0	0	0	0
	<i>Total score (X)</i>	<i>7.75</i> <i>65%</i>	<i>5.0</i> <i>42%</i>	<i>9.0</i> <i>75%</i>	<i>10.0</i> <i>83%</i>
	<i>Effectiveness (Y)*</i>	--	--	+	++

* Outcome analysis *dependent variable*

<i>Classification Independent versus Dependent Variables</i>	
0.0 / --	= None
0.25 / -	= Weak (vague, mild)
0.50 / +/-	= Low (weak to vague)
0.75 / +	= Medium (moderate, clear to vague)
1.00 / ++	= High (clear, severe, strong)

6.2. Independent analysis

The selected criteria for the dependent variable (y) are specifically designed to make an independent statement on the effectiveness of GLP, regardless the outcome of the institutional analysis. Four ‘Social & Environment’ criteria have therefore been in order to identify the ‘social & environmental’ commitment of the GLP toward: (1) *support of the poor*, (2) *ensure food security*, (3) *prevent displacement*, and (4) *environmental sustainability*. The outcome of the independent analysis (*Y variable*) is summarized in Table 9.

In summary can be concluded that most arguments, as derived from a literature review, work in favour of the African Union Framework and Guidelines (++), and the FAO-CFS Voluntary Guidelines (+). The WBG RAI principles and the EU land policy guidelines are highly contested. The independent analysis shows that most arguments, as derived from a literature review, work in favour of the African Union Framework and Guidelines, and the FAO-CFS Voluntary Guidelines. The EU land policy guidelines and the WBG RAI principles are highly

contested.

The EU guidelines are highly criticized for promoting land transactions by enhancing the investors climate, offering legal protection for investors under international law, in the form of investment and trade agreements to secure property rights, hereby weakening the policy space for national states and the power of host local communities.

The WBG RAI principles are highly criticized, particular by civil society, smallholder farmers and NGOs for a lack of transparency in the process, a lack of stakeholder involvement, and a lack of a clear vision for the future. This has led to the adoption of the 'Dakar Appeal against land grab' in 2011 by social movements, faith-based groups, environmental, development, and human rights organizations worldwide, advocating for a definite rejection of the RAI Principles by the Commission on Food Security, and restitution of lands that have been taken away from local communities illegally. The FAO VG specifically focus on worldwide 'food security', currently highly contested by civil society organizations who advocate for 'food sovereignty'. The debate is ongoing. The conjunction of the FAO VG with the WBG RAI principles has been subject of debate.

The AU framework and guidelines on land policy in Africa can help strengthening the position of national, as well as local governments, and local communities. They can bridge the gap between investor and host countries, by capacity improvement in negotiations of those representing the host country or local communities. Next to the EU, the LPI is assisting member states in implementing the AU guidelines, to achieve socio-economic development, peace & security, and environmental sustainability, hereby enhancing the likelihood of successful implementation of the framework and guidelines.

Although not specifically reflected in the outcome of the analysis by any of the institutions, the environment is often at risk when land is being leased or sold. The agricultural impact of LSLA deals therefore needs to be mapped before land deals are being closed. *Environment and social impact assessments* could be a useful tool in measuring the impact of land deals.

In summary can be stated that civil society, NGOs, and scholars strongly oppose the endorsement of the RAI principles. The recently developed FAO-CFS Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, can, together with the AU Framework and Guidelines on Land Policy in Africa, be seen as an important step toward regulating global land transactions, albeit not exclusive.

The analysis was however somewhat restricted, due to a lack of adequate non-biased literature on the EU land policy guidelines, the FAO voluntary guidelines, and the AU framework and guidelines on land policy.

7. Conclusion

The Land Matrix database is to date the most comprehensive data source on large-scale land transactions worldwide, although its legitimacy can be questioned due to the usage of crowdsourcing data. This study has focused on the effectiveness of and the conditions for effective global land policies (GLP), as established by the WGB, FAO, EU, and AU, in the context of current land policy debate and large-scale land transaction discourse. The conditions for effective GLP have been constituted through an extensive institutional framework with underlying political theories. Criteria for effectiveness have been defined based on theories of *transparency*, *legitimacy*, and *accountability*, taken into account that it is likely to assume that each governance mechanism or system requires a different design: (1) proper disclosure of information in the global land policy process is leading to more transparency and behavioural changes; (2) institutions being held accountable for their actions

by civil society organizations and NGO's, thus seen as more successful (i.e. legitimate); (3) these normative claims subsequently lead to more *legitimacy* and *transparency* in institutional policies and processes.

It is however usually only possible to make a statement on the actual change of behaviour and (environmental) impact 'after several years of operation' (Miles et al. 2001, p. 6). Since the FAO voluntary guidelines, and the AU framework and guidelines on land policy are currently being operationalized, it is difficult to make a statement on all three proposed conditions.

The African Union Framework and Guidelines, and the FAO Voluntary Guidelines, with possibilities for mutual cooperation, are most likely to succeed in effectively regulating large-scale land transactions in the near future.

Both the WBG RAI principles, and EU guidelines are highly criticized for facilitating land grabs by enhancing the investors climate, (1) offering legal protection for investors under international law, for example in the form of investment and trade agreements to secure property rights, and (2) encouraging developing countries in simplifying processes, making it relatively easy for foreign investors to gain access to land, at the expense of local communities, the environment and farm groups. Strengthening and increasing the protection of local rights under for example international law could be a solution. African countries have already taken the initiative to strengthen local and customary rights protection. Securing local land rights can offer farmers a valuable asset for negotiation. Business models can offer opportunities for smallholder farmers (incentives in land policies for businesses to work with local groups is a precondition).

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